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IN THE

Supreme Court of the United States

No. 894 Term, [redacted] 1957

UNITED STATES OF AMERICA,
Plaintiff

vs.

HENRY KISSINGER,
Defendant-Petitioner.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

In re the Judgment entered by the United States Court of Appeals for the Third Circuit at No. 12,241

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IN THE
SUPREME COURT OF THE UNITED STATES

No.

United States of America,

Plaintiff

vs.

Henry Kissinger,

Defendant-Petitioner

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, Henry Kissinger, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in the above entitled case on January 8, 1958, at 12,241.

A. OPINIONS BELOW

The Opinion in this case of the Hon. Frederick V. Follmer, United States District Judge for the United States District Court for the Middle District of Pennsylvania, is attached hereto as Appendix "A". This Opinion has not been printed in any official or unofficial law reports. The Opinion in this case of the United States Court of Appeals for the Third Circuit is attached hereto as Appendix "B". This opinion has been printed in the 250 Federal 2nd Reporter 940.

B. JURISDICTION

The judgment sought to be reviewed is that of the United States Court of Appeals for the Third Circuit, No. 12,241, dated and entered January 8, 1958. No petition for rehearing has been filed with the United States Court of Appeals for the Third Circuit, or with the Supreme Court of the United States, and no petition for an extension of time within which to petition for certiorari has been filed with the Supreme Court of the United States. It is believed that jurisdiction to review the judgment of the United States Court of Appeals for the Third Circuit is conferred upon the Supreme Court of the United States by Title 28, United States Code, section 1254, which provides:

"Cases in the courts of appeal may be reviewed by the Supreme Court by the following methods:

Jurisdiction

"(1) By writ of certiorari granted on petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

and by Title 28, United States Code, section 2101 (c), which reads:

"Any other appeal or any writ of certiorari intended to bring any judgment or decree in any civil act, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree."

Title 28 of the United States Code was passed as a single act of the Congress by the Act of June 25, 1948, c. 646, 62 Stat. 909.

C. QUESTIONS PRESENTED

1. Is a citizen of the United States to be deprived of a day in court to show by *evidence* that the enforcement of an Act of Congress has failed to accomplish its stated objectives, that its continued enforcement is unreasonable, and that therefore its continued enforcement is a violation of due process of law guaranteed by the Fifth Amendment of the Constitution.

2. Does the First Amendment which provides that Congress shall make no law prohibiting the free exercise of religion permit a farmer to be penalized for planting wheat when it is the religious conviction of the farmer that he should use his land and labor to realize the maximum fertility of his land.

D. STATUTE INVOLVED

The Agriculture Adjustment Act of 1938 as it relates to wheat quotas is in question. Since the statute is lengthy, pertinent parts of statute in question are set forth in Appendix "C" hereto.

E. BASIS OF JURISDICTION

The jurisdiction of the United States District Court over this proceeding is given section 1355 of the Title 28 of the United States Code, Judiciary and Judicial Procedure, as enacted by the Act of June 25, 1948, c. 646, 62 Stat. 909, which provides:

> "Sec. 1355. Fine, penalty or forfeiture.
>
> The district courts shall have original jurisdiction, exclusive of the courts of the States, of any action or proceeding for the recovery or enforcement of any fine, penalty, pecuniary or otherwise, incurred under any Act of Congress."

This jurisdiction is further confirmed by section 1345, of the same act which provides:

> "Section 1345. United States as plaintiff.
>
> Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by

the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress."

Further, the Agricultural Adjustment Act of 1938, c. 30, Title III, sec. 376, 52 Stat. 66, confers jurisdiction upon the United States District Courts; this act provides:

> "The several district courts of the United States are vested with jurisdiction specifically to enforce the provisions of this chapter. If and when the Secretary shall so request, it shall be the duty of the several United States Attorneys in their respective districts, under the direction of the Attorney General, to institute proceedings to collect the penalties provided in this chapter. The remedies and penalties provided for herein shall be in addition to, and not exclusive of, any of the remedies or penalties under existing law."

A penalty is provided under supplemental provisions to the Agricultural Adjustment Act of 1938, as amended, 52 Stat. 52, 7 U.S.C. 1340. The basic text of these supplemental provisions was passed by the Act of May 26, 1941, c. 133, 55 Stat. 203; with subsequent amendments providing minor alterations in the text; these amendments are: Dec. 26, 1941, ch. 626, sec. 2, 55 Stat. 860; Dec. 26, 1941, c. 636, 55 Stat. 872; Aug. 29, 1949, c. 518, sec. 3 (b), 63 Stat. 676; July 14, 1953, c. 194, sec. 3, 67 Stat. 151; Aug. 28, 1954, c. 1041, Title III, sec. 313, 68 Stat. 905. Since the text of this section applicable to this proceeding is long, it is given in Appendix "C" of this petition.

The Secretary of Agriculture requested the United States Attorney for the Middle District of Pennsylvania to bring this proceeding. See paragraph I of Complaint. This is the duty of the United States Attorney, as provided by

section 507 of Title 28 of the United States Code, Act of June 25, 1948, c. 646, 62 Stat. 909, which provides:

> "(a) Except as otherwise provided by law, it shall be the duty of the United States Attorney, within his district, to:
>
> • • • • • • • •
>
> (1) Prosecute or defend, for the government, all civil actions, suits or proceedings in which the United States is concerned."

The defendant, Henry Kissinger, resides at R. D., Millersburg, Dauphin County, Pa., which is within the jurisdiction of the United States District Court for the Middle District of Pennsylvania. See Paragraph 1 of Complaint. Venue lies in the district wherein the defendant resides, under the provisions of section 1391 (b) of Title 28 of the United States Code, Act of June 25, 1948, c. 646, 62 Stat. 909, which provides:

> "(b) a civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all defendants reside, except as otherwise provided by law."

F. ARGUMENT

I. IS A CITIZEN OF THE UNITED STATES TO BE DEPRIVED OF A DAY IN COURT TO SHOW BY *EVIDENCE* THAT THE ENFORCEMENT OF AN ACT OF CONGRESS HAS FAILED TO ACCOMPLISH ITS STATED OBJECTIVES, THAT ITS CONTINUED ENFORCEMENT IS UNREASONABLE, AND THAT THEREFORE ITS CONTINUED ENFORCEMENTS IS A VIOLATION OF DUE PROCESS OF LAW GUARANTEED BY THE FIFTH AMENDMENT OF THE CONSTITUTION?

In the present case the Plaintiff sought to show by *evidence* that the wheat marketing provisions of the Agricultural Adjustment Act had failed to achieve the objectives set forth in the Act, that therefore the enforcement of the Act had no reasonable relation to the objectives sought to be achieved in its enactment, and that therefore its continued enforcement is contrary to due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States. The desire of the Defendant to introduce *evidence* to show these things was pleaded in his Answer (see Paragraph 13 (a) and Paragraph 14 (2) of the Answer) and therefore was before the United States District Court.

After the Defendant's Answer the Plaintiff filed a Motion For Summary Judgment which was granted by the United States District Court.

Argument

The right of the Defendant to introduce evidence to show the failure of the Agricultural Adjustment Act was not discussed in the Opinion of the U. S. District Judge (Follmer, District Judge), who relied upon the case of *Wickard v. Filburn*, 1942, 317 U.S. 111.

In the Opinion of the United States Court of Appeals for the Third Circuit, (Maris, Kalodner and Staley, Circuit Judges) this question was dealt with as follows.

> "• • • The defendant nonetheless asserts that even though the Act has been upheld as a valid exercise of congressional power he should have been permitted by the district court to show by evidence that it has failed to achieve its objectives with respect to wheat. We do not agree. Once the question of constitutional power is answered in the affirmative the wisdom, need and effectiveness of a particular statute enacted in the exercise of that power is a question for the Congress not the courts. Oklahoma v. Atkinson Co., 1941, 313 U.S. 508, 527; Wickard v. Filburn, 1942, 317 U.S. 111, 129. • • •"

The U. S. Court of Appeals also cites in support of this position *Arizona v. California*, 1931, 283 U.S. 423, 456, and *Everard's Breweries v. Day*, 1924, 265 U.S. 545, 559.

In the present case we have the highly dubious procedure where the U. S. District Court ignored in its Opinion the constitutional question raised by the Defendant, and in the U. S. Court of Appeals dealt with the constitutional question raised by the Defendant by citing inapposite cases.

The opinions of the Supreme Court of the United States in the past have always distinguished between situ-

ations in which an Act of Congress was unconstitutional on its face, and an Act which, although constitutional on its face, was unconstitutional in its operation. The United States Court of Appeals has answered our contention that the Agricultural Adjustment Act is unconstitutional in its operation though valid on its face by citing cases which did not involve the issue of the unconstitutional operation of an Act valid on its face.

The distinction on which we rely is upheld by several opinions of the Supreme Court of the United States, a great number of opinions of the lower federal courts, and the courts of the various states. Such are the cases of *Weaver v. Palmer Bros. Co.*, 270 U.S. 402, 410 (1925); *United States v. Carolene Products Co.*, 304 U.S. 144, 153 (1938); and *Snowden v. Hughes*, 321 U.S. 1, 8 (1944).

In *Snowden v. Hughes*, supra, Mr. Chief Justice Stone said:

> "The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection, unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class or person * * * *or it may be shown by extrinsic evidence*, showing a discriminatory design to favor one individual or class over another not to be inferred from the action itself." (321 U.S. 8) (Emphasis added.)

In *U. S. v. Carolene Products Co.*, supra, Mr. Justice Stone said:

> "Where the existence of a rational basis for legislation whose constitutionality is attacked depends upon

facts beyond the sphere of judicial notice, such may properly be made the subject of judicial inquiry." (304 U.S. 153)

An in *Weaver v. Palmer Bros. Co.*, supra, Mr. Justice Butler said:

> "Legislative determinations expressed or implied are entitled to great weight; *but it is always open to interested parties to show that the Legislature has transgressed the limits of its power.* * * * Invalidity may be shown by things which will be judicially noticed * * * or * * * established by evidence." (270 U.S.410) (Emphasis added.)

While the highest courts of some states (notably Indiana) hold that on the question of unconstitutionality the only facts which may be considered by the court are those which can be judicially noticed, this is the minority rule. The Supreme Court of the United States and the federal courts have until this time consistently held that evidence may be introduced to show the unconstitutional operation of a statute valid on its face. (See the annotation of *United States v. Carolene Products Co.*, supra, in 82 L. ed. 1244.)

There is no excuse for the District Court or the Court of Appeals in the present case for failing to follow the precedents of the Supreme Court of the United States on this question. In addition to the authority which we have just mentioned, we cited before the District Court and the Court of Appeals the following authorities:

Opinions of the Supreme Court of the United States:

Kennedy v. Silas Mason Co., 334 U.S. 249;

Eccles v. Peoples Bank, 333 U.S. 426;

Arenas v. United States, 322 U.S. 419;

Pacific States Co. v. White, 296 U.S. 176;

Nashville C. & St. L. R. Co. v. Walters, 294 U.S. 176;

Borden's Farm Products v. Baldwin, 294 U.S. 405, 415;

Chastleton Corp. v. Sinclair, 264 U.S. 543;

Muller v. Oregon, 208 U.S. 412, where Louis Brandeis won his case by putting extensive tables of statistics in his brief to show there was a reasonable basis in fact to support the challenged legislation.

Opinions of the lower federal courts:

Pacific American Fisheries v. Mullany, 191 F. 2d. 137;

Moss v. Hawaiian Dredging Co., 187 F. 2d 442, 446;

Farrell v. District of Columbia A.A.U., 153 F. 2d 647;

Arkansas v. Cent. Sur. and Ins. Co., etc., 102 F. Supp. 444;

Law v. City of Baltimore, 87 F. Supp. 346, 351;

Bouchert v. City of Ranger, 42 F. Supp. 577, 580;

Paramount Pictures v. Langer, 22 F. Supp. 890, 897.

Opinions of the various state supreme courts:

East New York Sav. Bank v. Hahn, 293 N.Y. 662, 59 N.E. 2d 625;

Harrisburg Dairies v. Eisaman, 328 Pa. 195, 195 A. 337;

Pennsylvania R. Co. v. Driscoll, 330 Pa. 97, 198 A. 130, 134;

Harrisburg Dairies v. Eisaman, 338 Pa. 58, 11 A. 2d 875, 877;

Waller v. Commonwealth, 178 Va. 294, 16 S.E. 2d 808;

Ritholz v. Johnson, 244 Wisc. 494, 12 N.W. 738 (1944).

And the following text authorities:

Barron and Holtzhoff on Federal Practice, section 1247;

Bikle, Prof. Henry Wolf, 38 Harvard Law Review 6;

Moore on Federal Practice, section 56.17 (10), section 56.16;

Wigmore, John Henry, Treatise on Evidence, 3rd Edition, section 255(d);

Corpus Juris Secundum, Constitutional Law, section 97;

30 *Columbia Law Review* 360;

49 *Harvard Law Review* 631.

The question then boils down to whether the Supreme Court of the United States is going to permit the District Court and the Court of Appeals to overrule by *silence* the foregoing legal authorities, including almost a dozen opinions of the Supreme Court of the United States. Unless the Supreme Court of the United States is willing to tolerate a flagrant disregard of the precedents of its numerous rulings on the point at issue by the lower federal courts, this petition for a writ of certiorari must be granted.

Argument

If the Supreme Court of the United States is now going to sanction a change in the rule on this question which it has uniformly and consistently adhered to in the past, then it seems to us that such a sanction should not be given by indirection, that is by the denial of the present Petition for a Writ of Certiorari. A sanction of your Honorable Court for a change in this rule should only be given after full argument on the merits of this question. Consequently, if the Supreme Court of the United States is of the opinion that the ruling on this question of the Court of Appeals should be upheld, then it should sanction this change openly after argument and opinion, and therefore the Petition for a Writ of Certiorari should be granted.

We will not say in this Petition much concerning the merits of whether the rule heretofore adhered to by the Supreme Court of the United States is correct, since the merits should be properly argued after the Petition for a Writ of Certiorari is granted. However, we do feel that a brief statement by us on the argument why the position of the Supreme Court of the United States on this question heretofore has been correct, is in order at this time. If the Supreme Court of the United States were to hold that once a statute has been upheld as constitutional by it, thereafter its operation may not be shown to be unconstitutional, either by evidence or by facts within judicial notice, such a rule would result in the vice of both too much power and too little power for the courts. It would extend the judicial power too far because such a custom would in effect make the court a legislature which would validate unconstitutional operation of statutes which of course can only be done by the formal amendment of the Constitution. It would restrict the judicial power too much because it

would deny to the courts the power to correct the unconstitutional operation of a statute. It is inconceivable to us the Supreme Court of the United States would wish to abdicate its right to challenge the unconstitutional operation of a statute merely because it was valid on its face.

II. DOES THE FIRST AMENDMENT WHICH PROVIDES THAT CONGRESS SHALL MAKE NO LAW PROHIBITING THE FREE EXERCISE OF RELIGION PERMIT A FARMER TO BE PENALIZED FOR PLANTING WHEAT WHEN IT IS THE RELIGIOUS CONVICTION OF THE FARMER THAT HE SHOULD USE HIS LAND AND LABOR TO REALIZE THE MAXIMUM FERTILITY OF HIS LAND?

To the contention of the petitioner that by reason of his religious training and belief he considers it morally wrong and contrary to the teachings of Holy Scripture to limit the production of his farm so that it produces any lessor amount of food than it is capable of producing, subject to the knowledge and judgment of farming which God has given him, that therefore a restraint upon his obtaining such maximum production is a violation of the free exercise of his religion guaranteed by the First Amendment to the Constitution, the Court of Appeals has made the following answers:

(1) "The penalties under the act were not imposed upon him because he produced the excess wheat but only because he marketed it."

(2) "Freedom of religion guaranteed by the First Amendment does not include freedom from all

regulation of an individual's acts and conduct as contradistinguished from his belief."

To the first answer of the Court of Appeals the reply of the petitioner is that the record contains no proof whatsoever that he marketed any of the wheat in question. It is apparent that any casual study of the wheat quota laws and regulations will show that the penalty for planting wheat in excess of quota attaches the moment the wheat is planted. While it is true that subject to certain subsequent actions of the petitioner, the petitioner may avoid the penalty, nevertheless we believe that the correct view of the penalty provisions is that a penalty is imposed upon the planting. It is therefore not true to say in regard to the petitioner as does the Court of Appeals that the penalty is imposed for "the sale of it in the channels of commerce".

In regard to the second answer of the Court of Appeals, as we pointed out in our Brief before it, the question presented when the protection of the First Amendment is sought by an individual from otherwise applicable laws is: "How much are the activities * * * at issue those of commerce and how much are they those of religious practice?"

In determining this question, it should be kept in mind that agriculture should be distinguished from other commercial activities, since its product is not the mere result of human labor, but the result of the combination of human labor and God's Providence. Man may plant but only with God's will does he reap.

No dependence upon mechanical rules of nature, or no exercise of persistence will successfully produce a crop. Man plants, and then he waits. Without the favor of God's growth, there will be no yield. God alone, despite

any efforts of man, has the power to grant or withhold the increase.

Can the petitioner in the present case make the grain of wheat grow after putting it in the ground? Can he by the mere adjustment of machines and the pressing of a button, produce wheat?

It is therefore seen that agriculture is of a more sacred nature than other commercial activities, being as it is so utterly dependent upon the favor of God that its practice may truly be said by a pious man to be a religious obligation, sacramental in character.

The Courts have held that many secular activities are so imbued with religious implications, that they fall within the protection of the First Amendment. For example: Jehovah's Witnesses have a right to refuse to salute the flag, *Board of Education v. Barnette*, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943); a person has the right to refuse to serve on a jury for conscientious reasons, *U. S. v. Hillyard*, 52 F. Supp. 612 (1943); and a person may not be deprived of property because his professed religious beliefs offend the government, *Jinsha v. McGrath*, 90 F. Supp 892 (1950).

While it is true that recent cases of the United States Courts of Appeal have ruled against those claiming the protection of the First Amendment in the exemption of the regulation of their commercial activities, such as *Mitchell v. Pilgrim Holiness Church Corporation*, 210 F. 2d 879 (1954), cert. den. 347 U.S. 1013, 74 S. Ct. 867, 98 L. Ed. 1136, and *Wicks v. Southern Pacific Co.*, 121 F. Supp. 454 (1954), affirmed 231 F. 2d 130 (1956), cert den. 351 U.S. 946, 76 S. Ct. 845, 100 L. Ed. 1471, these cases are distinguishable from the present case.

Argument

The operation of a printing press can be accomplished by man's efforts alone with a mere mechanical dependence upon static rules of nature. The operation of a railroad may be impeded by inclement weather, but the freight can be delivered despite these difficulties by the exercise of persistence. But no dependence upon static rules of nature, or no exercise of persistence, will make a grain of wheat grow. In agriculture, God's intervention is no distant and impersonal thing, but an intervention in history, in time.

But apart from this, there is considerable doubt that the *Pilgrim Holiness Church* case, or the *Wicks* case, supra, were correctly decided. The denial of a writ of certiorari by the Supreme Court of the United States in those cases does not imply any approval of the lower court opinions which it refused to review, but only that no issues of sufficient importance were raised therein to merit review. We believe our present case is not governed by the *Pilgrim Holiness Church* case, or the *Wicks* case, but in the event the present case is so governed, a useful purpose would be served by granting certiorari in the present case to determine more precisely the exact line between those religious activities with commercial overtones which are within the protection of the First Amendment from regulation, and those which are outside of the protection of the First Amendment.

SUPPLEMENT TO ARGUMENT—PETITIONER'S RELIGIOUS VIEWS

My client has insisted that we present in this Petition for a Writ of Certiorari the basis for his religious convictions that it is contrary to his conscience to obey the wheat

quota laws, and therefore oppressive of his practice of religion as protected by the First Amendment to the Constitution. His insistence was so strong that we were unable to have his consent to the filing of this Petition unless some presentation of his religious views was made in this Petition.

It is a little irregular in our opinion to present matters which are evidential in character which are not in the record, and therefore not perhaps fully and adequately argued before the lower courts and considered by them in their Opinions. We do not feel too apologetic in this instance because the petitioner has not been given an opportunity in the lower court to set forth his particular religious views. Furthermore, this is a case involving religious freedom under the First Amendment, and is therefore unusual in and of itself, and we are hoping that perhaps your Honorable Court will be somewhat indulgent if our Petition is a little out of the ordinary.

We are therefore going to summarize the religious views of the Petitioner in this matter as he has presented them to us, and as we understand them, from the particular passages of Scripture on which he relies to support his position. In the *concrete*, they may not be relevant in the consideration of this case, but in the *abstract*, we believe the religious views we present may be properly considered by your Honorable Court. That is, your Honorable Court may consider them abstractly as to whether or not a person holding in good faith the religious views we are going to set forth below, and acting in the manner in which the Petitioner has acted, would be entitled to claim exemption from the regulation of the wheat quota laws on the basis that their enforcement against him would be oppressive of his right to the free practice of his religion guaranteed by

the First Amendment to the Constitution. These religious views are as follows.

(1) *Man ought not to interfere with the Providence of God.*

God controls the harvest and what quantity the harvest is to be, either large or small; See your Holy Bible, Genesis, Chapter 41, and the right one has to that grain, either large or small, in Ecclesiastes 5:8 to 20.

(2) *Even though a man or nation has plenty, it is still his duty to labor and bring forth fruit.*

See your Holy Bible, St. Luke 12:13 to 20; See St. Luke 19:12 to 27; also St. Luke 12:48.

(3) *Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's.* St. Matthew 22:17 to 22.

The petitioner is not claiming freedom from all regulations or laws in the guise of his religion, as the court implies. Man and government must know at what point the law belongs to God and at which point the law belongs to government. See your Holy Bible, I Samuel 12:13 to 25. The petitioner is concerned with regulations or laws when they interfere with his right of free exercise of religious practice as is guaranteed to all our citizens by the First Amendment to our Constitution. See your Holy Bible, Exodus, Chapter 20. "Thou shalt have no other gods before me." "Thou shalt not kill." "Thou shalt not steal." "Thou shalt not bear false witness against thy neighbor." "Thou shalt not covet thy neighbor's house, thou shalt not covet thy neighbor's wife, nor his manservant, nor his maidservant, nor his ox, nor his ass, nor anything that is thy neighbors." The definition of one's neighbor is given in your Holy Bible, St. Luke, Chapter 10:29 to 37, inc.

Argument

There is some misunderstanding about the operation of the wheat quota laws in practice. It may be argued that the Petitioner can avoid the penalties by storing the grain on his farm, but such storage is always for the use of the Secretary of Agriculture. This is forced charity, as we shall explain. Another way in which the Petitioner may be able to avoid the penalty is by agreeing to reduce his planting for the next year's wheat crop by the amount he has overplanted this year's wheat crop. This would limit planting and production, as the Court of Appeals denies. The Petitioner knows that your Honorable Court will not find any regulation justifying this practice, but it occurs, and the Petitioner feels that your Honorable Court should investigate to determine whether or not such irregular practices are occurring in the enforcement of the wheat quota laws.

It may be argued that it is the Petitioner's duty to Caesar to turn over the grain to the government at the end of the harvest season, or to store his grain for the benefit of the government. However, the turning over of the grain in such a case is not the payment of a tax, it is a confiscation, and is contrary to every one of the above quoted passages from Exodus, Chapter 20. To give the wheat to the government in these circumstances would be forced charity, and charity must come from love and free will of the heart of the giver. See your Holy Bible, Acts, Chapter 11:27 to 30; II Corinthians, Chapter 9:5 to 15; Romans, Chapter 15:26; I Corinthians, Chapter 16:1 & 2.

(4) *The wheat quota laws are an oppression upon the people, and God will punish a nation which oppresses its people thus.*

In your Holy Bible, Chapters 2 and 3 of the Book of Micah, is the description of our very own conditions today, just as they were in those days. Please read the warning.

(5) *Conclusion. It is man's duty to obey God.*

In your Holy Bible, the record in Philippians gives an account of Paul to the church at Philippi. The Petitioner would if he could appear to the court to give an accounting of himself before the court as did the Apostle Paul to the church. The petitioner would also show that he and his accusers were not perfect and would point out to them the requirements of God. This accounting would be very much the same as was the Apostle Paul's. The Petitioner would read to the court as one thought, Philippians, Chapter 1:2, 7 to 30; Chapter 2:1 to 16; Chapter 3:1, 2, 3 and 8 to 21; Chapter 4:1, & 4 to 13, inclusive; Exodus, Chapter 20. So by this reading of scripture one can see that man cannot live by bread but by every word that proceedeth out of the mouth of God. St. Matthew, Chapter 4:4. Some men have a conscience and morals about every day life and feel there is no compromise with wrong; just as Jesus Christ did not compromise with wrong. See your Holy Bible, Deuteronomy, Chapter 30:9 to 20.

CONCLUSION

Wherefore, we urge your Honorable Court to grant the above Petition For a Writ of Certiorari to the United States Court of Appeals for the Third Circuit upon either or both of the grounds set forth in this Petition, and that this Petition if containing merit on one ground should not be denied because of being without merit on the other ground.

Respectfully submitted,

ANDREW WILSON GREEN,

Attorney for Petitioner.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
Middle District of Pennsylvania

Civil No. 5485

United States of America

vs.

Henry Kissinger

OPINION OF HON. FREDERICK V. FOLLMER

The United States of America instituted this action against Henry Kissinger to recover civil penalties under the Agricultural Adjustment Act of 1938, as amended, 7 U.S.C. §1281 et seq., alleging that defendant failed to store or deliver to the Secretary any part of the farm marketing excess of wheat in accordance with the requirements of the Act and the regulations promulgated thereunder. Plaintiff has filed motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.

The Secretary of Agriculture, pursuant to the provisions of the Agricultural Adjustment Act, on June 30, 1953, by proclamation duly filed (18 F.R. 3780-1) declared

a National Marketing quota in effect with respect to the marketing of wheat during the 1954-1955 marketing year. Notice of a referendum of farmers who would be subject to the quota, as required by 7 U.S.C. §1336, was duly promulgated, 18 F.R. 4221. On September 22, 1953, a proclamation was duly issued (18 F.R. 5707) announcing the results of the Wheat Marketing Quota Referendum for the marketing year 1954-1955, which proclamation stated "Therefore, wheat marketing quotas will be in effect for the 1954-55 marketing year."

The defendant contends that he did not receive a personal notification of the fact that wheat marketing quotas were in effect for the 1954-1955 marketing year. There is no such requirement in the Act. This matter was fully covered by the administrative action properly filed and published in the Federal Register as indicated above. The requirement of 7 U.S.C. §1362 is that "Notice of the farm marketing quota of his farm shall be mailed to the farmer." He does not deny that he received the "Notification Of 1954 Wheat Acreage Allotment" establishing a wheat allotment of 16 acres for 1954 for his farm. His answer in this respect, however, alleges "It is admitted that the defendant received notification of 1954 wheat acreage allotment in a form similar to that set forth in Exhibit A, attached hereto and made a part hereof. However, the original notification was inadvertently destroyed by the defendant, and the defendant requested another copy of this notification from the Dauphin County Production and Marketing Administration Committee, who sent him a notification, a copy of which is attached hereto as Exhibit A. However, the defendant believes that the second notification sent to him differs from the first in

that the first did not include the words 'and for farm marketing quotas if marketing quotas are applicable for the 1954 wheat crop', and also 'if marketing quotas are applicable to the 1954 crop of wheat', as underlined on the said Exhibit A, or any other words pertaining to quotas. Except as hereinabove stated, Paragraph 4 is admitted."

An affidavit in support of the motion for summary judgment attaches a copy of the Form GR-308-WHEAT (1954) (4-28-53), which was sent to defendant and avers "That the wording contained in said notice is the same as the wording on all other such notices used for the notification of 1954 Wheat Acreage Allotments as printed by the United States Government Printing Office coded 1953-252926." and "That all 1954 Wheat Acreage Allotment notices marked, 'copy', 'second run', 'duplicate', 'correction', etc. which were mailed from this office were from the same government printing order (1953-252926)." This is not denied.

This lack of memory of defendant does not rise to the dignity of creating a genuine issue of fact.[1] Neither does it raise a material issue of fact since he must be charged with knowledge of the original declaration of the Secretary of Agriculture and of the result of the referendum vote by the farmers affected thereby, in which referendum he either did or should have participated. Upon his failure to apply for review of the determination of his farm marketing quota, as required by the Act, it became final, 7 U.S.C. §1363. That he subsequently received on or about June 2, 1954, the "Notice Of 1954 Farm Marketing Quota

[1] Chandler Laboratories v. Smith, D.C. E.D. Pa., 88 F. Supp. 583; McClellan v. Montana-Dakota Utilities Co., D.C. Minn., 104 F. Supp. 46, Affirmed 8 Cir., 204 F. 2d 166.

And Farm Marketing Excess Of Wheat" for his farm, and that he made no application for downward adjustment in the marketing excess as provided in the Act, is not in dispute.

There is therefore no genuine or material issue of fact. On the facts pleaded plaintiff is clearly entitled to judgment. Defendant's main reliance appears to be on the question of the constitutionality of the Act. This precise issue was before the Court of Appeals of this Circuit in United States v. Mumma, 3 Cir., 237 F. 2d 795, Cert. Den. Feb. 26, 1957, not yet reported, and that court there said "Appellant's sole contention is that the Act is unconstitutional. In line with this, she argues that Wickard v. Filburn, 1942, 317 U.S. 111, 63 S. Ct. 82, 87 L. Ed. 122, which upheld the constitutionality of the Act and the cases which followed that decision, including our own Blattner v. United States, 3 Cir., 1955, 223 F. 2d 468, were all decided erroneously. We disagree with that view."

The motion for summary judgment will therefore be granted. Let Order be submitted accordingly.

(s) Frederick V. Follmer
United States District Judge

March 1, 1957.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12,241

UNITED STATES OF AMERICA
v.
HENRY KISSINGER,
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Argued November 6, 1957
Before MARIS, KALODNER and STALEY, *Circuit Judges*

OPINION OF THE COURT

(Filed January 8, 1958)

By MARIS, *Circuit Judge.*

This is an appeal by the defendant from a judgment rendered against him in the District Court for the Middle District of Pennsylvania in an action brought by the United States for the purpose of collecting civil penalties under the Agricultural Adjustment Act of 1938, as amended.[1]

[1] 7 U.S.C.A. §§ 1281 et seq.

The penalties sued for were alleged to have been incurred by the defendant, who is a farmer, by reason of his having produced on his farm and marketed an amount of wheat in excess of the farm marketing quota imposed upon him under the Act for the 1954 crop of wheat. The defendant does not here dispute that such a quota was imposed upon him in that year or that he produced and marketed an excess of wheat over his quota. His defense is that the Act is unconstitutional in that having failed of its aim in regard to wheat its enforcement violates the Due Process Clause of the Fifth Amendment and in that as applied to him it interferes with his exercise of a religious duty and, therefore, violates the First Amendment.

The United States urges that the defendant is precluded from asserting these defenses in this case because he failed to exhaust his administrative remedies in that he did not apply to have his farm marketing quota reviewed by the local review committee set up under the Act.[2] We cannot agree with the Government's contention in this regard. We do not think that Congress, by stipulating in the Act for the review of a farm marketing quota by a review committee, can prevent an aggrieved farmer from raising the question of the Act's constitutionality for the first time in the district court as a defense to an action for penalties under the Act. For the question of the constitutionality of the Act is quite a different question from whether the farmer's quota is proper and it is a question with which a committee set up under the Act is not competent to deal since its sole authority is derived from the Act and disappears if the Act is unconstitutional. See Davis, Administrative Remedies Often Need Not Be Ex-

[2] 7 U.S.C.A. § 1363.

hausted, 19 F.R.D. 437, 454, and compare Yakus v. United States, 1944, 321 U.S. 414, and Bowles v. Willingham, 1944, 321 U. S. 503, with Miller v. United States, 6 Cir. 1957, 242 F. 2d 392.

Turning then to the defendant's constitutional contentions we find them to be wholly without merit. The constitutionality of the Agricultural Adjustment Act as a valid exercise of congressional power under the Commerce Clause of the Constitution has been settled beyond peradventure of doubt. Mulford v. Smith, 1939, 307 U.S. 38; Wickard v. Filburn, 1942, 317 U.S. 111; Secretary of Agriculture v. Central Roig Refining Co., 1950, 338 U.S. 604. The defendant nonetheless asserts that even though the Act has been upheld as a valid exercise of congressional power he should have been permitted by the district court to show by evidence that it has failed to achieve its objectives with respect to wheat. We do not agree. Once the question of constitutional power is answered in the affirmative the wisdom, need and effectiveness of a particular statute enacted in the exercise of that power is a question for the Congress not the courts. Oklahoma v. Atkinson Co., 1941, 313 U.S. 508, 527; Wickard v. Filburn, 1942, 317 U.S. 111, 129. Thus it has been held that whether a particular statutory enactment under the Commerce Clause is reasonably necessary is not for the courts to determine. Arizona v. California, 1931, 283 U.S. 423, 456. They do not have power to inquire into either the degree of the necessity for such legislation or its wisdom or effectiveness. Everard's Breweries v. Day, 1924, 265 U.S. 545, 559.

The defendant's contention under the First Amendment is equally without merit. His contention is that since by reason of his religious training and belief he considers

it morally wrong and contrary to the teachings of the Holy Scriptures to limit the production of his farm so that it produces any lesser amount of food than it is capable of producing, subject to the knowledge and judgment of farming which God has given him, it is a violation of his constitutional right of religious freedom to restrain him from obtaining such maximum production.

There are two answers to defendant's contention in this regard. The first is that the penalties under the Act were not imposed upon him because he produced the excess wheat but only because he marketed it. For the Act expressly provides that the Secretary of Agriculture shall issue regulations under which the farm marketing excess for a farm may be stored or delivered to him for relief purposes and only upon failure to thus store or deliver to the Secretary the farm marketing excess within the time fixed by such regulations is the producer required to pay the penalties thereon.[3] It thus appears that the defendant

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[3] "(3) The farm marketing excess for wheat shall be regarded as available for marketing, and the penalty and the storage amount or amounts to be delivered to the Secretary of the commodity shall be computed upon the normal production of the excess acreage. Where, upon the application of the producer for an adjustment of penalty or of storage, it is shown to the satisfaction of the Secretary that the actual production of the excess acreage is less than the normal production thereof, the difference between the amount of the penalty or storage as computed upon the basis of normal production and as computed upon the basis of actual production shall be returned to or allowed the producer. The Secretary shall issue regulations under which the farm marketing excess of the commodity for the farm may be stored or delivered to him. Upon failure to store or deliver to the Secretary the farm marketing excess within such time as may be determined under regulations prescribed by the Secretary, the penalty computed as aforesaid shall be paid by the producer. Any wheat delivered to the Secretary hereunder shall become the property of the United States and shall

was perfectly free to produce all the wheat which his land was capable of producing and if he had stored or delivered to the Secretary of Agriculture the excess over his quota he would not have been subject to any penalty whatever. It will thus be seen that it was not the production of the wheat, which the defendant's conscience requires of him, but the sale of it in the channels of commerce instead of its storage or delivery for relief purposes which brought about the imposition of the penalties for which the present suit was brought.

The second answer to defendant's contention under the First Amendment is that the freedom of religion guaranteed by the First Amendment does not include freedom from all regulation of an individual's acts and conduct as contradistinguished from his beliefs. On the contrary, the enforcement of a reasonable nondiscriminatory regulation of conduct by governmental authority to preserve peace, tranquility and a sound economic order does not violate the First Amendment merely because it may inhibit conduct on the part of individuals which is sincerely claimed by them to be religiously motivated. Davis v. Beason, 1890, 133 U.S. 333, 342-345; Prince v. Massachusetts, 1944, 321 U.S. 158, 163-171; Poulos v. New Hampshire, 1953, 345 U.S. 395, 405; Mitchell v. Pilgrim Holiness Church Corp., 7 Cir. 1954, 210 F. 2d 879, 884-885, cert. den. 347 U.S. 1013.

The judgment of the district court will be affirmed.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

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be disposed of by the Secretary for relief purposes in the United States or in foreign countries or in such other manner as he shall determine will divert it from the normal channels of trade and commerce." 7 U.S.C.A. § 1340(3).

APPENDIX C

The statute involved in this appeal is found in 7 U.S. C. 1340. The basic text of this provision was enacted by the Act of May 26, 1941, c. 133, 55 Stat. 203. Subsequent minor amendments are enacted in the following legislation: Acts of Dec. 26, 1941, c. 626, sect. 2, 55 Stat. 860; Dec. 26, 1941, c. 636, 55 Stat. 872; Aug. 29, 1949, c. 518, sect. 3 (b), 63 Stat. 676; July 14, 1953, c. 194, sect. 3, 67 Stat. 151. A later amendment to the section was passed by the Act of Aug. 29, 1954, c. 1041, Title III, sect. 313, 68 Stat. 905, making its provisions inapplicable to corn. The text of this statute as it applies to the present case is set forth below:

"Sect. 1340 Supplemental provisions relating to wheat marketing quotas; marketing penalty for rice; crop loans on cotton, wheat, rice, tobacco, and peanuts:

Notwithstanding the other provisions of this chapter—

(1) the farm marketing quota under this chapter for any crop of wheat shall be the actual production of the acreage planted to wheat on the farm, less the normal production or the actual production, whichever is the smaller, of that acreage planted to wheat on the farm which is in excess of the farm acreage allotment for wheat.

The normal production, or the actual production, whichever is the smaller, of such excess acreage is hereinafter called the "farm marketing excess" of wheat. For the purposes of this section "actual production"

of any number of acres of wheat on a farm means the actual average yield of wheat for the farm times the number of such acres.

(2) During any marketing year for which quotas are in effect, the producer shall be subject to a penalty on the farm marketing excess of wheat. The rate of penalty on wheat shall be 45 per centum of the parity price per bushel of wheat as of May 1 of the calendar year in which the crop is harvested.

(3) The farm marketing excess for wheat shall be regarded as available for marketing, and the penalty and the storage amount or amounts to be delivered to the Secretary of the commodity shall be computed upon the normal production of the excess acreage. Where, upon the application of the producer for an adjustment of penalty or of storage, it is shown to the satisfaction of the Secretary that the actual production of the excess acreage is less than the normal production thereof, the difference between the amount of the penalty or storage as computed upon the basis of normal production and as computed upon the basis of normal production shall be returned to or allowed the producer. The Secretary shall issue regulations under which the farm marketing excess of the commodity for the farm may be stored or delivered to him. Upon failure to store or deliver to the Secretary the farm marketing excess within such time as may be determined under regulations prescribed by the Secretary, the penalty computed as aforesaid shall be paid by the producer. Any wheat delivered to the Secretary hereunder shall become the property of the United States and shall be disposed of by the Secretary for

relief purposes in the United States or in foreign countries or in such other manner as he shall determine will divert it from normal channels of trade and commerce.

(4) Until the producers on any farm store, deliver to the Secretary, or pay the penalty on, the farm marketing excess of any crop of wheat, the entire crop of wheat produced shall be subject to a lien in favor of the United States for the amount of the penalty.

(5) The penalty upon wheat stored shall be paid by the producer at the time, and to the extent, of any depletion in the amount of the commodity so stored, except depletion resulting from some cause beyond the control of the producer.

(6) Whenever the planted acreage of the then current crop of wheat on any farm is less than the farm acreage allotment for such commodity, the total amount of the commodity from any previous crops required to be stored in order to postpone or avoid payment of penalty shall be reduced by the amount which is equal to the normal production of the number of acres by which the farm acreage allotment exceeds the planted acreage. The provisions of section 1326 (b) and (c) of this title shall be applicable also to wheat.

(7) A farm marketing quota on wheat shall not be applicable to any farm on which the acreage planted to the commodity is not in excess of fifteen acres. The marketing penalty on wheat shall not be applicable to any farm which, under the terms of the then agricultural conservation program formulated under sections 590g, 590h, 590i, 590j-590q of Title 16, is classified as a nonallotment farm, etc. * * *

(8) Until the farm marketing excess of wheat is stored or delivered to the Secretary or the penalty thereon is paid, each bushel of the commodity produced on the farm which is sold by the producer to any person within the United States shall be subject to the penalty as specified in paragraph (2) of this section. Such penalty shall be paid by the buyer who may deduct an amount equivalent to the penalty from the price paid to the producer.

(9) The marketing penalty for rice, etc. * * *

(10) The Commodity Credit Corporation is directed to make available upon the 1941, 1942, 1943, 1944, 1945 and 1946 crops, etc. * * *

(11) The provisions of the section are amendatory of and supplementary to this chapter, and all provisions of law applicable in respect to marketing quotas and loans under such chapters as so amended and supplemented shall be applicable, but nothing in this section shall be construed to amend or repeal sections 1301(b)(6), 1323(b), or 1335(d) of this title.

(12) Notwithstanding any of the foregoing provisions, the farm marketing excess for any crop of wheat shall not be larger than the amount by which the actual production of such crop of wheat on the farm exceeds the normal production of the farm wheat acreage allotment, if the producer establishes such actual production to the satisfaction of the Secretary. Where a downward adjustment in the amount of the farm marketing excess is made pursuant to the provisions of this paragraph, the difference between the amount of the penalty or storage as computed upon the adjusted farm marketing excess shall be returned to or allowed the producer."

THE RECORD

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

No. 5485 Civil

United States of America,

Plaintiff

vs.

Henry Kissinger,

Defendant

I.

COMPLAINT

Plaintiff, for cause of action against defendant, alleges:

I.

That J. Julius Levy, United States Attorney for the Middle District of Pennsylvania, acting under the direction of the Attorney General, upon request of the Secretary of Agriculture, hereinafter referred to as "the Secretary", brings this complaint under the provisions of the Agricultural Adjustment Act of 1938, as amended and supplemented (7 U.S.C. 1281 to 1393; Act of January 30,

1954, 68 Stat. 4; and Act of August 28, 1954, 68 Stat. 897), hereinafter referred to as "the Act", to collect penalties provided in the Act from defendant. This Court has jurisdiction of the subject matter of this action under the provisions of Section 376 of the Act (7 U.S.C. 1376), and Title 28, United States Code, Section 1345. Defendant, whose mailing address is Millersburg, resides in Dauphin County, in said State, and within the jurisdiction of this Court.

II.

After the performance and occurrence of all conditions precedent the marketing quota provisions of the Act were made effective with respect to the 1954 crop of wheat for the marketing year beginning July 1, 1954 (7 U.S.C. 1301, 1332, 1333, 1335; 18 F.R. 2417, 3780, 4166; 7 U.S.C. 1336; 18 F.R. 4221, 5707), and pursuant to the Act (7 U.S.C. 1375) the Secretary issued regulations pertaining to acreage allotments (18 F.R. 2621, 3161, 4047; 19 F.R. 972, 1336, 1562), and marketing quotas (18 F.R. 6711; 19 F.R. 202, 1481, 2763, 6134, 6879, 8500; 20 F.R. 24, 189, 1200) for the 1954 crop of wheat, hereinafter referred to as "the regulations".

III.

Wheat was planted for harvest in 1954 on the farm in Dauphin County, Pennsylvania, identified under the regulations (Reg. Sec. 728.454) by Serial No. 2B-10, hereinafter referred to as "the farm", and all or part of such wheat was harvested prior to January 31, 1955. Defendant, as owner, landlord, tenant or sharecropper, was entitled to all of a share of such crop of wheat or of the proceeds thereof and under the Act and regulations was a producer of wheat on the farm with respect to the 1954 crop (Reg. Sec. 728.451(1)).

IV.

After the performance and occurrence of all conditions precedent and in accordance with the Act and regulations (7 U.S.C. 1334; 18 F.R. 4418; 19 F.R. 4850; Reg. Secs. 728.410-728.424), the Secretary, acting through the Dauphin County Agricultural Conservation and Stabilization Committee, hereinafter referred to as "the committee", established a wheat acreage allotment of 16 acres for said farm for the 1954 crop of wheat and duly gave written notice thereof in accordance with law (7 U.S.C. 1362).

V.

In compliance with the Act and regulations (7 U.S.C. 1301(b)(13)(E); Reg. Sec. 728.453; 7 U.S.C. 1340; Reg. Secs. 728.451, 728.458, 728.459; 7 U.S.C. 1334; Reg. Secs. 728.410-728.424; 7 U.S.C. 1388), the committee determined for said farm for the 1954 crop of wheat the following facts:

Acreage of wheat	20 acres
Farm wheat acreage allotment	16 "
Excess acreage of wheat	4 "
Wheat normal yield per acre	21 bushels
Normal production of acreage allotment	336 "
Farm marketing excess of wheat	84 "

Written notice of said determinations of facts and that the farm marketing quota of wheat for the 1954 crop for the farm was the amount of wheat produced thereon in 1954, less the farm marketing excess, was duly issued and mailed to defendant by the committee on or about June 2, 1954 (7 U.S.C. 1340; Reg. Secs. 728.458, 728.459; 7 U.S.C. 1362; Reg Sec. 728.460). The notice informed defendant of the

provisions of law relating to a downward adjustment in the farm marketing excess and the review of the farm marketing quota or farm marketing excess or any determination made in connection therewith. Defendant failed to apply under the Act and regulations for a downward adjustment in the farm marketing excess determined for the farm (7 U.S.C. 1340; Reg. Sec. 728.461). Defendant further failed to apply for a review by a review committee of the farm marketing quota or farm marketing excess or any of the aforesaid determinations made in connection with said quota or excess as provided in the Act and regulations (7 U.S.C. 1363; Reg. Sec. 728.465).

VI.

In accordance with the requirements of the regulations (Reg. Secs. 728.461, 728.477, and 728.490) the Pennsylvania State Agricultural Stabilization and Conservation Committee, United States Department of Agriculture, determined for the 1954 crop year that the date on which the threshing of wheat is normally substantially completed in Dauphin County, Pennsylvania, is August 16, 1954 (20 F.R. 24). After the issuance of the notice referred to in paragraph V hereof the regulations were amended to provide that the penalty on the farm marketing excess of wheat for any farm should be remitted not later than sixty calendar days after the date on which the threshing of wheat is normally substantially completed in the county in which the farm is situated, as determined by the State committee, or January 31, 1955, whichever is the later, and to provide for appropriate credit for any portion of the farm marketing excess stored or delivered to the Secretary on or before the aforesaid applicable date (Reg. Sec. 728.477 (b), as amended, 20 F.R. 24).

VII.

The parity price per bushel of wheat, as of May 1, 1954, was $2.50, and under the provisions of the Act (7 U.S.C. 1952 ed. Supp. I, Sec. 1340(2)) the rate of penalty applicable to the 1954 crop of wheat is $1.12 per bushel (Reg. Sec. 728.475, as amended, 19 F.R. 2763).

VIII.

Defendant has failed to store or deliver to the Secretary any part of said farm marketing excess in accordance with the Act and regulations (7 U.S.C. 1340 (3); Reg. Secs. 728.482, 728.483). Under the Act and regulations the penalty applicable to the 1954 farm marketing excess of wheat determined for the farm is $94.08, and said sum was required to be paid by defendant not later than January 31, 1955. Under the Act and regulations the defendant and PAUL KEEFER of Millersburg, Pennsylvania, were producers of wheat on said farm Serial No. 2B-10 with respect to the 1954 crop on a 50-50 share basis. On or about April 12, 1955, PAUL KEEFER paid his one-half share of the penalty, $47.04. Defendant has failed to and refused to pay his one-half share of the penalty or any part thereof and no part of said one-half share of the penalty has otherwise been paid.

IX.

WHEREFORE, plaintiff demands judgment against defendant for the sum of $47.04, the costs of this action, and such other relief as this Court may deem just and proper in the premises.

UNITED STATES OF AMERICA

By (s) J. Julius Levy

United States Attorney

II.

ANSWER

And, now, comes the defendant, by his attorney, Andrew Wilson Green, whose address is 603 North Front Street, Harrisburg, Pennsylvania, and alleges in answer to the complaint in the above entitled civil action as follows:

1. Paragraph I of the complaint is admitted.

2. Paragraph II of the complaint is admitted.

3. Paragraph III of the complaint is admitted.

4. Paragraph IV of the complaint is answered as follows. It is admitted that the defendant received notification of 1954 wheat acreage allotment in a form similar to that set forth in Exhibit A, attached hereto and made a part hereof. However, the original notification was inadvertently destroyed by the defendant, and the defendant requested another copy of this notification from the Dauphin County Production and Marketing Administration Committee, who sent him a notification, a copy of which is attached hereto as Exhibit A. However, the defendant believes that the second notification sent to him differs from the first in that the first did not include the words "and for farm marketing quotas if marketing quotas are applicable for the 1954 wheat crop", and also "if marketing quotas are applicable to the 1954 crop of wheat," as underlined on the said Exhibit A, or any other words pertaining to quotas. Except as hereinabove stated, Paragraph 4 is admitted.

5. Paragraph V of the complaint is answered as follows: It is admitted that the defendant received notice of the determination of facts dated June 2, 1954, but it is to be noted that the said determination of facts was made before the harvesting of the wheat in question. It is admitted that the defendant failed to apply for a downward adjustment of the farm marketing excess, or any of the determinations of fact referred to in Paragraph V of the complaint.

6. Paragraph VI of the complaint is admitted.

7. Paragraph VII of the complaint is admitted.

8. Paragraph VIII of the complaint is answered as follows: It is admitted that the defendant failed to store or to deliver to the Secretary of Agriculture any part of the farm marketing excess. It is admitted that the penalty applicable to the 1954 farm marketing excess on the said farm is $94.08, and it is further admitted that Paul Keefer paid half of the said penalty, or $47.04, and it is further admitted that the defendant has not paid and has refused and continues to refuse to pay the said penalty sought to be enforced against him in the amount of $47.04. However, the defendant denies that as to him, the said Act and Regulations have the force of law.

9. The defendant denies that there is due and owing to the plaintiff the sum of $47.04, or any other sum, and further avers that there is no other relief to which the plaintiff is entitled to against the defendant.

NEW MATTER

10. The defendant, by reason of his religious training and belief, considers it morally wrong and contrary to

the teachings of the Holy Scriptures to limit the production of his farm so that his farm produces any lesser amount of food than it can, subject to the knowledge and judgment of farming which God has been pleased to give to the defendant in respect to the farming of his farm.

11. The enforcement of the Agricultural Adjustment Act of 1938, as against the defendant in the manner sought in the complaint, would be contrary to the First Amendment to the Constitution of the United States, which provides that "Congress shall make no law * * * prohibiting the free exercise (of religion) * * * *".

12. The Agricultural Adjustment Act of 1938, in respect to wheat quotas, is unlawful, inasmuch as Congress has no power to pass such an Act, under the provisions of clause 3, Section 8, Article I of the Constitution of the United States, or any other provision thereof.

13. The enforcement of the Agricultural Adjustment Act of 1938 is contrary to the provisions of the Fifth Amendment of the Constitution of the United States, which provides that "no person * * * shall * * * be deprived of life, liberty, or property, without due process of law", in the following respects:

(a) The failure of the enforcement of the wheat marketing provisions of the Agricultural Adjustment Act of 1938 to achieve the objectives set forth in the Act since its enactment to the present time, shows that the enforcement of the said Act bears no reasonable relationship to the objectives sought by it, and that its continued enforcement is contrary to due process of law.

(b) One of the incidents of property is the right to use it as the owner sees fit, subject only to the requirements of the public defense, the public health, welfare, and morals (the police power of the state), and the proper and special regulation of commerce, authorized to Congress by clause 3, Section 8, Article I of the Constitution of the United States. The management of a farm is not an object of or incident to interstate commerce, and therefore, the imposition of a penalty upon the owner thereof in respect to the management of a farm is a deprivation of property without due process of law.

14. Wherefore, the defendant prays (1) that the Court may hear testimony from the defendant concerning his religious training and beliefs, and from experts in the field of religion in respect to the support of the defendant's religious beliefs from the Holy Scriptures, and (2) that the Court may hear testimony from economic experts concerning the failure of the enforcement of the Agricultural Adjustment Act of 1938 to achieve the objects set forth in the Act since its enactment to the present time, and (3) to hear argument concerning the Constitutional questions raised by defendant's answer herein.

And the defendant will ever pray, etc.

Henry Kissinger, Defendant
By his Attorney:
Andrew Wilson Green

December 30, 1955

EXHIBIT A

Copy Copy

Form GR-308-WHEAT (1954)
(4-28-53)

SECOND RUN

UNITED STATES DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

NOTIFICATION OF 1954 WHEAT ACREAGE ALLOTMENT

(State, County Code and farm serial no.) Penna-022-2B-10

(Acreage of land in farm) 109

(Date) 8/10/53

To: (Name and address of operator) Paul Keefer, Millersburg, Penna.

And to all other persons who as operator, landlord, tenant or sharecropper are interested in the above identified farm for which this acreage allotment is established.

A wheat allotment of 16 acres has been established for 1954 for this farm for the purposes of the price support provisions of the Agricultural Act of 1949 *and for farm marketing quotas if marketing quotas are applicable for the 1954 wheat crop.* If there has been any material change in the farm, this allotment shall not be effective; the allotment shall be redetermined by the county committee when such change becomes known to it; and a new notice of the revised allotment shall be given.

Answer
Exhibit A

THE COUNTY COMMITTEE SHOULD BE PROMPTLY INFORMED OF ANY CHANGES IN THE OWNERSHIP, OPERATION, OR CONTROL OF THE FARM IDENTIFIED ABOVE AND OF ANY CHANGES AS A RESULT OF DIVISION, SALE OR RENTING OF PART OF THE LAND OR PURCHASE OR RENTING OF ADDITIONAL LAND.

If any interested producer is dissatisfied with the acreage allotment shown above he may within 15 days after the mailing of this notice appeal for reconsideration of his allotment. The appeal and facts constituting a basis for such consideration must be submitted in writing to the address shown below.

If marketing quotas are applicable to the 1954 crop of wheat and any interested producer is dissatisfied with the acreage allotment shown above he may within 15 days after the mailing of this notice have such allotment reviewed by a local review committee of three farmers appointed by the Secretary of Agriculture. Any such application for review must be in writing and filed with the Secretary of the county committee at the address shown below in accordance with regulations prescribed by the Secretary of Agriculture (7 CFR 711.1-711.34). These regulations are available at the office of the county committee.

Carbon Copy to: (Owner)
Name ———— Adress ————
Henry Kissinger
Millersburg, Penna.

Dauphin County Production and Marketing Administration Committee Brotherhood Bldg., Harrisburg, Pa.

by (s) Wilmer Brubaker

III.

MOTION FOR SUMMARY JUDGMENT

To the Honorable, the Judges of Said Court:

J. Julius Levy, United States Attorney in and for the Middle District of Pennsylvania, attorney for Plaintiff, moves the Court to grant summary judgment against the Defendant and in favor of the plaintiff, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

J. Julius Levy
United States Attorney
424 Post Office Building
Scranton 1, Penna.

Date: May 10, 1956